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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,811	06/24/2003	David V. Boland	2442.001	1082

7590 07/25/2006

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EXAMINER

MAYES, DIONNE WALLS

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 07/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/602,811

**Applicant(s)**

BOLAND, DAVID V.

**Examiner**

Dionne Walls Mayes

**Art Unit**

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 and 12 is/are allowed.
- 6) ☒ Claim(s) 1, 3-10, 13-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 8, 2006 has been entered.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 13-14 are rejected under 35 U.S.C. 102(b) as being anticipated by either Krein (US. Pat. No. 5,059,084) or LaFleur (US. Pat. No. 5,794,670).

Krein or LaFleur discloses all that is recited in the claims (See entirety of each document and figs).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3-10, 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garland (US. Pat. No. 5,765,339) in view of LaFleur (US. Pat. No. 5,794,670).

Garland discloses a container that receives and stores soiled items, said container 14 having a bag received therein, and comprising a closure mechanism which would serve to apply pressure to the to separate an upper portion of said bag from a lower portion (see figs. 15-27). Garland may not specifically disclose an air eliminator that communicates with a space that is between the bag and the container. However, LaFleur does teach that when flexible bags are used to line rigid containers, and such liners need to be filled with materials, it is common for the liner to pull away from the container walls which can cause problems (see col. 1, lines 12-27). Therefore, LaFleur teaches that air may be removed in the space between the liner and the container, such that the liner remains in contact with the container and conforms to the interior container configuration (see col. 1, lines 47-67). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the container of Garland to include the air elimination system disclosed in LaFleur in order to reduce the likelihood of liner failure while used in the container as taught in LaFleur.

Regarding claim 3, it follows that the air eliminator of LaFleur, employed in Garland, would communicate with a space that is between the lower portion of the bag in the container since the goal is to ensure that the bag will not pull away from the container walls, and the part of the bag which is filled with material (i.e. the lower part) is obviously the portion of the bag that tends to do so.

Regarding claims 4-5, 7-9, 14-16, 18-19, it is apparent from the reading of the disclosure and drawings that these limitations have been met.

Regarding claims 6 and 17, it would have been obvious to one having ordinary skill in the art at the time of the invention to have fabricated the bag/liner of the combined references of a flame retardant material since this is a standard characteristic of materials in many arts because of fire-safety concerns.

Regarding claims 10 and 20, it follows that one having ordinary skill in the art would have structured the closing mechanisms so that they are "spring biased" since such types of closures are conventional in many arts.

***Allowable Subject Matter***

5. Claims 11-12 are allowed.

***Response to Arguments***

6. Applicant's arguments filed 5/8/06 have been fully considered but they are not persuasive.

- In response to Applicant's contention that one skilled in the art, designing a container for discarded smoking materials, would not find motivation or a suggestion in the prior art to combine the LaFleur and Garland references to arrive at Applicant's invention as claimed. The Examiner disagrees. Applicant asserts that there is no suggestion in LaFleur to pull the bag against an interior portion of the container by means of an air eliminator to increase flame resistance or retard flammability or burning, but Applicant has not included such recitation in the claims at issue - it is just merely mentioned in the instant specification. Further, the Examiner finds no indication that

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LaFleur fails to disclose eliminating air between the bag and the container. To the contrary, the LaFleur reference teaches exactly that (see col. 1, lines 58-59). Third, Applicant asserts that the Action fails to show how the cited references meet the requirements of the claims, but the Examiner believes that this is clear from the references, namely the figures.

### ***Conclusion***

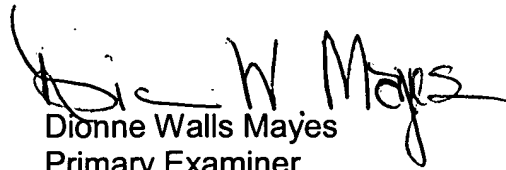
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne Walls Mayes whose telephone number is (571) 272-1195. The examiner can normally be reached on Mon-Fri, 7AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin can be reached on (571) 272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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A handwritten signature in black ink, appearing to read "Dionne Walls Mayes". The signature is stylized with a large, looped "D" and a long, sweeping underline.

Dionne Walls Mayes  
Primary Examiner  
Art Unit 1731

July 20, 2006